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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/644,659	08/20/2003	Eric Olson	MYOG:037US	6211
7590 10/20/2004			EXAMINER	
Steven L. Highlander FULBRIGHT & JAWORSKI L.L.P. 600 Congress Avenue, Suite 2400 Austin, TX 78701			MONDESI, ROBERT B	
			ART UNIT	PAPER NUMBER
			1653	

DATE MAILED: 10/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/644,659

Applicant(s)

OLSON ET AL.

Examiner

Robert B Mondesi

Art Unit

1653

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 August 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17, 24-34 and 61-69 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17, 24-34 and 61-69 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

This office action is in response to the amendment filed August 06, 2004. **Claims 18-23, 35-60 and 70-105** are canceled. **Claims 1-17, 24-34 and 61-69** as drawn to elected Invention I are currently pending and are under examination. The Examiner would also like to reaffirm the further election of patentably distinct nucleic acid sequence designated as SEQ ID NO:1.

Withdrawal of Objections and Rejections

The rejection of **claims 1-17** under 35 U.S.C § 112, second paragraph is withdrawn.

The rejection of **claims 7-14** under 35 U.S.C § 101 as being drawn to non-statutory subject matter is withdrawn.

The rejection of **claims 1-6, 24-34 and 61-69** under 35 U.S.C § 102(b) as being anticipated by Arai et al. is withdrawn based upon the affidavit under 37 CFR 1.132 filed August 06, 2004 which is sufficient to overcome the rejection because of some great reason.

New rejection(s)

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

Art Unit: 1653

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-17, 24-34, 61-69 are rejected under 35 U.S.C. 102(a) as being anticipated by Isogai et al. (NCBI Sequence Submission, Accession Number AK092694).

Isogai et al. teach a cDNA expression vector of a clone comprising a nucleic acid sequence that is 99.9% identical to the nucleic acid sequence designated as SEQ ID No1 (NCBI Sequence Submission, Accession Number AK092694). Thus Isogai et al. teach all the elements of **claims 1-17 and 24-26, and 30** and these claims are anticipated under 35 USC 102(a).

Claims 1-17, 24-34, 61-69 are rejected under 35 U.S.C. 102(e) as being anticipated by Isogai et al. United States Patent Application Publication 2003/0236392.

Isogai et al. disclose a cDNA expression vector of a clone comprising a nucleic acid sequence (nucleotides 57 to 1202 of nucleic acid sequence designated as SEQ ID NO: 1199) that is 99.9% identical to the nucleic acid sequence designated as SEQ ID No: 1. Isogai et al. teach that the expression vector of their invention is constructed using an eukaryotic expression vector that contains a SR. alpha promoter and SV40 small t intron in the upstream region of the cloning site, and SV 40 polyA added signal sequence site in the down stream (section 1006). Isogai et al. also teach that the

Art Unit: 1653

"isolated polynucleotide" of their invention is a recombinant nucleotide sequence that is part of a gene encoding a fusion polypeptide (section 0035). Isoga et al. teach a method of producing a polypeptide in a cell encoded by the mentioned sequence, comprising transforming a cell with an expression cassette and culturing the cell under suitable conditions wherein the transforming comprises infection with a viral vector, electroporation or calcium phosphate precipitation and wherein the cell is an eukaryotic or prokaryotic cell (0029, 0068, 0070, 0325, 0696 and 0872). Thus Isogai et al. teach all the elements of **claims 1-17, 24-34, 61-69** and these claims are anticipated under 35 USC 102(e).

Conclusion

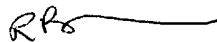
No claims are allowed

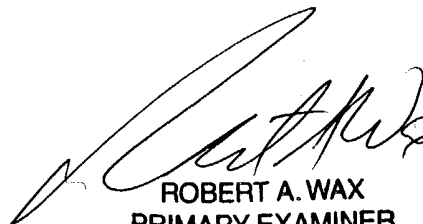
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert B Mondesi whose telephone number is 571-272-0956. The examiner can normally be reached on 9am-5pm, Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jon Weber can be reached on 571-272-0925. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 1653

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Robert B. Mondesi
Patent Examiner
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10-18-04


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